

AMENDED IN SENATE AUGUST 10, 2010  
AMENDED IN SENATE JULY 15, 2010  
AMENDED IN SENATE JUNE 16, 2010  
AMENDED IN SENATE SEPTEMBER 4, 2009  
AMENDED IN SENATE AUGUST 26, 2009  
AMENDED IN SENATE JUNE 30, 2009  
AMENDED IN SENATE JUNE 11, 2009  
AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 471**

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**Introduced by Assembly Member Nava**

February 24, 2009

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~~An act to amend Sections 11040 and 11042 of, and to add Sections 11042.1, 11042.2, 11042.3, and 11046 to, the Government Code, and to amend Section 1341.6 of the Health and Safety Code, relating to~~ *An act to amend Sections 11042, 11043, 12517, 12518, 12521, 12522, 12542, 12574, 12591, and 12593 of the Government Code, relating to* legal services.

### LEGISLATIVE COUNSEL'S DIGEST

AB 471, as amended, Nava. Legal services.

~~Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding. Existing law exempts from those requirements~~

~~certain state entities to perform specified duties with regard to providing state agencies with legal services.~~

~~This bill would recast these provisions, define terms for their purposes, and state several factors the Attorney General may consider when considering consenting to a state agency, commissioner, or officer employing in-house counsel or outside counsel, as defined. The bill would make other conforming changes make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 11042 of the Government Code is*  
2     *amended to read:*

3     11042. No state agency, commissioner, or officer shall employ  
4     any legal counsel other than the Attorney General, or one of his  
5     or her assistants or deputies, in any matter in which the agency,  
6     commissioner, or officer is interested, or is a party as a result of  
7     office or official duties.

8     *SEC. 2. Section 11043 of the Government Code is amended to*  
9     *read:*

10    11043. Except as to the ~~State~~ state agencies and laws specified  
11    in Section 11041, whenever any law authorizes any ~~State~~ state  
12    agency to employ legal counsel other than the Attorney General,  
13    it shall be construed to refer to the Attorney General. The Attorney  
14    General may assign to the ~~State~~ state agency assistants or deputies  
15    from his or her staff, under ~~such~~ terms as he or she deems  
16    necessary to conduct the legal business of or render legal counsel  
17    to the state agency.

18    *SEC. 3. Section 12517 of the Government Code is amended to*  
19    *read:*

20    12517. When in his or her opinion it may be necessary for the  
21    collection or enforcement of any judgment in favor or for the use  
22    of the state, the Attorney General shall institute and prosecute, in  
23    behalf of the state, actions or proceedings to set aside and annul  
24    all conveyances fraudulently made by judgment debtors. When  
25    allowed by the Department of General Services, the necessary cost  
26    shall be paid out of any available appropriation.

1     *SEC. 4. Section 12518 of the Government Code is amended to*  
2     *read:*

3     12518. Whenever any action is brought against the ~~State~~ *state*  
4     or any ~~State~~ *state* agency involving the title, or right to possession  
5     or the boundaries of any lands belonging to the ~~State~~ *state* or in  
6     which it has any interest, the Attorney General may, when in his  
7     or her judgment the public interest so requires, upon his or her  
8     own motion or upon the request of any ~~State~~ *state* agency, appear  
9     as attorney in defense of the ~~State~~ *state* or ~~State~~ *state* agency.

10    Upon his or her own motion or upon the request of any ~~State~~  
11    *state* agency, the Attorney General may institute such an action in  
12    the name of the people of the ~~State~~ *state* or on behalf of any ~~State~~  
13    *state* agency.

14    *SEC. 5. Section 12521 of the Government Code is amended to*  
15    *read:*

16    12521. The Attorney General shall account for and pay over  
17    to the proper officer all money which may come into his or her  
18    possession belonging to the ~~State~~ *state* or to any county.

19    *SEC. 6. Section 12522 of the Government Code is amended to*  
20    *read:*

21    12522. On or before the fifteenth day of September in each  
22    even-numbered year, the Attorney General shall report to the  
23    Governor the condition of the affairs of his or her office and of  
24    the reports received by him or her from district attorneys.

25    *SEC. 7. Section 12542 of the Government Code is amended to*  
26    *read:*

27    12542. The Attorney General may employ counsel to act in  
28    his or her place and stead for the investigation for discovery and  
29    the recovery of any such property. In such proceedings counsel so  
30    employed *shall* have the authority of the Attorney General.

31    *SEC. 8. Section 12574 of the Government Code is amended to*  
32    *read:*

33    12574. The Attorney General may employ additional special  
34    agents and investigators not exceeding 10 in number, to enable  
35    him or her to carry out his or her duties relative to sabotage and  
36    subversive activities. The special agents and investigators are  
37    exempt from civil service.

38    *SEC. 9. Section 12591 of the Government Code is amended to*  
39    *read:*

1 12591. The Attorney General may institute appropriate  
2 proceedings to secure compliance with this article and to invoke  
3 the jurisdiction of the court. The powers and duties of the Attorney  
4 General provided in this article are in addition to his *or her* existing  
5 powers and duties. Nothing in this article shall impair or restrict  
6 the jurisdiction of any court with respect to any of the matters  
7 covered by it, except that no court shall have jurisdiction to modify  
8 or terminate any trust of property for charitable purposes unless  
9 the Attorney General is a party to the proceedings.

10 *SEC. 10. Section 12593 of the Government Code is amended*  
11 *to read:*

12 12593. Every person who offers for probate any instrument  
13 ~~which that~~ establishes a testamentary trust of property for charitable  
14 purposes or who records in any county or city and county any inter  
15 vivos transfer of property for charitable purposes shall furnish a  
16 copy of ~~such the~~ document to the Attorney General. The custodian  
17 of the records of a court having jurisdiction of probate matters or  
18 of charitable trusts shall furnish ~~such~~ copies of papers, records,  
19 and files of his *or her* office relating to the subject of this article  
20 as the Attorney General requires.

21 ~~SECTION 1. Section 11040 of the Government Code is~~  
22 ~~amended to read:~~

23 11040. (a) ~~This article does not affect the right of any state~~  
24 ~~agency or employee to employ counsel in any matter of the state,~~  
25 ~~after first having obtained the written consent of the Attorney~~  
26 ~~General.~~

27 (b) ~~It is the intent of the Legislature that overall efficiency and~~  
28 ~~economy in state government be enhanced by employment of the~~  
29 ~~Attorney General as counsel for the representation of state agencies~~  
30 ~~and employees.~~

31 ~~The Legislature finds that it is in the best interests of the people~~  
32 ~~of the State of California that the Attorney General be provided~~  
33 ~~with the resources needed to develop and maintain the Attorney~~  
34 ~~General's capability to provide competent legal representation of~~  
35 ~~state agencies and employees.~~

36 (c) ~~Except with respect to employment by the state officers and~~  
37 ~~agencies specified by title or name in Section 11041 or when~~  
38 ~~specifically waived, exempted, or excepted by statute other than~~  
39 ~~Section 11041, the express written consent of the Attorney General~~  
40 ~~is required prior to employment of outside counsel for~~

1 representation of any state agency or employee in any judicial or  
2 other proceeding, or advice or opinion matter.

3 SEC. 2. ~~Section 11042 of the Government Code is amended~~  
4 ~~to read:~~

5 11042. ~~A state agency, commissioner, or officer may employ~~  
6 ~~in-house counsel to provide legal services. However, except as~~  
7 ~~otherwise specifically provided in this article or another statute,~~  
8 ~~only the Attorney General, or one of his or her assistants or~~  
9 ~~deputies, shall represent a state agency, commissioner, or officer~~  
10 ~~in relation to a judicial or other proceeding in which the agency,~~  
11 ~~commissioner, or officer is interested, or is a party as a result of~~  
12 ~~office or official duties, unless express written consent is given by~~  
13 ~~the Attorney General to employ in-house counsel.~~

14 SEC. 3. ~~Section 11042.1 is added to the Government Code, to~~  
15 ~~read:~~

16 11042.1. ~~Nothing in this article prohibits a state agency,~~  
17 ~~commissioner, or officer from obtaining legal services from the~~  
18 ~~Attorney General that are unrelated to a judicial or other~~  
19 ~~proceeding.~~

20 SEC. 4. ~~Section 11042.2 is added to the Government Code, to~~  
21 ~~read:~~

22 11042.2. ~~When a state agency, commissioner, or officer~~  
23 ~~employs in-house or outside counsel in a judicial or other~~  
24 ~~proceeding, the Attorney General may intervene or appear as~~  
25 ~~amicus curiae to the extent permitted by the court.~~

26 SEC. 5. ~~Section 11042.3 is added to the Government Code, to~~  
27 ~~read:~~

28 11042.3. ~~In determining whether to give consent to a state~~  
29 ~~agency, commissioner, or officer to employ in-house counsel or~~  
30 ~~outside counsel in a judicial or other proceeding, and the extent~~  
31 ~~of this consent, the Attorney General may consider public policy,~~  
32 ~~potential conflicts of interest, the availability of subject matter~~  
33 ~~expertise and staffing within the Office of the Attorney General,~~  
34 ~~the availability of subject matter expertise and staffing among~~  
35 ~~in-house counsel, and other relevant factors.~~

36 SEC. 6. ~~Section 11046 is added to the Government Code, to~~  
37 ~~read:~~

38 11046. ~~For purposes of this article and unless otherwise~~  
39 ~~specifically stated, the following definitions shall apply:~~

1 (a) ~~“In-house counsel” means a licensed attorney employed in~~  
2 ~~state service by a state agency, commissioner, or officer, other~~  
3 ~~than a licensed attorney employed in state service in the Office of~~  
4 ~~the Attorney General.~~

5 (b) ~~“Judicial or other proceeding” means litigation in a civil~~  
6 ~~court, an administrative adjudicatory proceeding in which an~~  
7 ~~agency is represented by an attorney, including any related~~  
8 ~~alternative dispute resolution proceeding. Administrative~~  
9 ~~adjudicatory proceedings before the State Personnel Board, the~~  
10 ~~Department of Personnel Administration, or the Unemployment~~  
11 ~~Insurance Appeals Board are exempt from this definition.~~

12 (c) ~~“Outside counsel” means a licensed attorney engaged in the~~  
13 ~~private practice of law.~~

14 SEC. 7. ~~Section 1341.6 of the Health and Safety Code is~~  
15 ~~amended to read:~~

16 1341.6. (a) ~~The Attorney General shall render to the director~~  
17 ~~opinions upon all questions of law, relating to the construction or~~  
18 ~~interpretation of any law under the director’s jurisdiction or arising~~  
19 ~~in the administration thereof, that may be submitted to the Attorney~~  
20 ~~General by the director and upon the director’s request shall act~~  
21 ~~as the attorney for the director in actions and proceedings brought~~  
22 ~~by or against the director under or pursuant to any provision of~~  
23 ~~any law under the director’s jurisdiction.~~

24 (b) ~~Sections 11042, 11042.1, 11042.2, 11042.3, and 11043 of~~  
25 ~~the Government Code do not apply to the Director of the~~  
26 ~~Department of Managed Health Care or to the Department of~~  
27 ~~Managed Health Care.~~